PANTAI BAYU EMAS SDN BHD & ORS A

v.

SOUTHERN BANK BHD

FEDERAL COURT, PUTRAJAYA B
ALAUDDIN MOHD SHERIFF PCA
ARIFIN ZAKARIA CJ (MALAYA)
ZULKEFLI AHMAD MAKINUDIN FCJ
[CIVIL APPEAL NO: 02 (i)-6-2008 (Q)]
23 JANUARY 2009 C

CIVIL PROCEDURE: *Parties - Substitution of plaintiff - Bank with vesting order - Legal effect of vesting order made under s. 50 Banking and Financial Institutions Act 1989 by High Court in Malaya - Whether applicable in Sabah and Sarawak - Whether Lee Hui Jian v. Public* D *Bank Bhd overruled - Banking and Financial Institutions Act 1989, s. 50(1), (3), (4), (6)and (7) - Courts of Judicature Act 1964, s. 7(2) - Federal Constitution, arts. 121(3)*

CIVIL PROCEDURE: *Locus standi - Bank with vesting order -* E *Vesting order obtained in High Court in Malaya - Whether order effective to pursue claim in Sarawak - Lee Hui Jian v. Public Bank Bhd - Whether overruled - Banking and Financial Institutions Act 1989, s. 50(1), (3), (4), (6), (7) - Courts of Judicature Act 1964, ss. 7(2), 23(1) - Federal Constitution, arts. 121(3)* F

CONSTITUTIONAL LAW: *Jurisdiction - Bank with vesting order - Vesting order obtained in High Court in Malaya - Whether order effective to pursue claim in Sabah and Sarawak - Lee Hui Jian v. Public Bank Bhd - Whether overruled - Banking and Financial Institutions Act 1989,* G *s. 50(1), (3), (4), (6), (7) - Courts of Judicature Act 1964, ss. 7(2), 23(1) - Federal Constitution, arts. 121(3)*

BANKING: *Banks and banking business - Vesting order - Vesting order obtained in High Court in Malaya - Whether order effective to pursue claim in Sabah and Sarawak - Lee Hui Jian v. Public Bank Bhd -* H *Whether overruled - Banking and Financial Institutions Act 1989, s. 50(1), (3), (4), (6), (7) - Courts of Judicature Act 1964, ss. 7(2), 23(1) - Federal Constitution, arts. 121(3)*

The respondent bank applied to have CIMB Bank Berhad ('CIMB I Bank') substituted as the plaintiff in its claim against the appellants in Kuching, Sarawak on the grounds that CIMB Bank had obtained all its rights, assets and liabilities including all legal proceedings thereto by virtue of a vesting order. The appellants

A applied to strike out the application on the grounds that the vesting order could not transfer the respondent's claim against the appellants to CIMB Bank in Kuching, Sarawak. The High Court granted the order for substitution and dismissed the striking-out application. The appellants appealed to the Court of Appeal. The B Court of Appeal dismissed the appellants' appeal and overruled the decision of *Lee Hui Jian v. Public Bank Bhd* thereby affirming the decision of the High Court. *(See p 644 of this CLJ issue)*. The appellants now appealed to the Federal Court on the following question of law, namely, whether a vesting order made by the C High Court in Malaya pursuant to s. 50 of the Banking and Financial Institutions Act 1989 ('BAFIA') was effective in transferring to and vesting in the transferee, all the transferor's rights, assets and liabilities including all legal proceedings in relation thereto involving the transferor in Sabah and Sarawak.

D

Held (dismissing the appeal)
Per Alauddin Mohd Sheriff PCA delivering the judgment of the court:

E **(1)** Section 23(1) Courts of Judicature Act 1964 ('CJA') did not deal with nor was it intended to regulate the efficacy of a vesting order. Also, it did not exclude the operation of an order, made by one High Court, in the "local jurisdiction" of another High Court. In other words, s. 23(1) CJA did not F exclude the operation, in Sabah and Sarawak, of the vesting order made by the High Court in Malaya at Kuala Lumpur. The efficacy or effect of the orders of the two High Courts in Malaya and the High Courts in Sabah and Sarawak were provided by s. 50(1), (3), (4), (6) and (7) BAFIA, s. 7(2) CJA and art. 121(3) of the Federal Constitution ('the Constitution'). G Although s. 50 subsections (1), (3), (4), (6) and (7) BAFIA were considered in *Lee Hui Jian*'s case, s. 7(2) CJA and art. 121(3) of the Constitution were not taken into consideration. The latter written laws required a more elaborate consideration. (paras 25 & 26)

H

(2) The intention of the law expressed in s. 50 sub-ss. (1), (3), (4), (6) and (7) BAFIA was to regulate the application of a vesting order and to facilitate the effectual transfer of the whole or part of the business, assets, rights and liabilities from I the predecessor bank to the successor bank and not to create obstacles in the way of substantial justice. (para 27)

(3) Subsection (2) of s. 7 CJA stipulated that all writs, summonses, warrants, orders, rules, notices and other processes whatsoever, whether civil or criminal, issued or made by the authority of the court respecting any cause or matter within its jurisdiction shall have full force and effect and may be served or executed anywhere within Malaysia. The status of s. 7(2) CJA was further elevated and enhanced by art. 121(3) of the Constitution. Article 121(3) of the Constitution clearly provided for any order or judgment to have full force and effect throughout the territories of the federation, *ie*, Malaya, Sabah and Sarawak. It also enabled federal law to provide for one High Court to act in aid of the other. (paras 37, 38, 39 & 40)

(4) Article 74(1) of the Constitution provided that Parliament might make laws with respect to any matters enumerated in the First or Third List of the Ninth Schedule thereto, *ie*, the Federal List or the Concurrent List. Item 7(j) of the First List (Federal List) provided that matters of finance including banking matters fell under the purview of the federal government. Therefore, BAFIA, a federal legislation, applied throughout Malaysia. (para 42)

(5) The vesting order was effectual in transferring the business of the respondent located in any part of Malaysia to CIMB Bank and was effective throughout Malaysia. The question for determination must therefore be answered in the affirmative. (paras 43 & 44)

(6) The decision in *Lee Hui Jian v. Public Bank Bhd* was overruled as decided by the Court of Appeal. (para 45)

Bahasa Malaysia *Translation Of Headnotes*

Bank responden telah memohon supaya CIMB Bank Berhad ('CIMB Bank') menggantikan dirinya sebagai plaintif dalam tuntutannya terhadap perayu-perayu di Kuching, Sarawak atas alasan bahawa CIMB Bank telah memperoleh semua hak-hak, aset-aset serta liabiliti-liabilitinya termasuk semua prosiding undang-undang yang berkaitan di bawah satu perintah letakhak. Perayu-perayu memohon untuk membatalkan permohonan atas alasan bahawa perintah letakhak tidak berkuasa memindahkan tuntutan responden terhadap perayu-perayu di Kuching, Sarawak kepada

CIMB Bank. Mahkamah Tinggi membenarkan perintah penggantian dan menolak permohonan untuk membatalkan. Perayu-perayu merayu. Mahkamah Rayuan bagaimanapun menolak rayuan serta keputusan di dalam kes *Lee Hui Jian v. Public Bank Bhd* sekaligus mengesahkan keputusan Mahkamah Tinggi. *(Lihat ms 644 isu CLJ ini)*. Maka perayu-perayu kini merayu ke Mahkamah Persekutuan atas persoalan undang-undang berikut, iaitu sama ada suatu perintah letakhak yang dibuat oleh Mahkamah Tinggi Malaya di bawah s. 50 Akta Bank dan Institusi-Institusi Kewangan 1989 ('BAFIA') boleh memindah dan meletakhak segala hak-hak, aset-aset dan liabiliti-liabiliti pemindah termasuk semua prosiding undang-undang yang berkaitan kepada penerima pindahan, jika ia melibatkan pemindah di Sabah dan Sarawak.

Diputuskan (menolak rayuan)

Oleh Alauddin Mohd Sheriff PMR menyampaikan penghakiman mahkamah:

(1) Seksyen 23(1) Akta Mahkamah Kehakiman 1964 ('CJA') tidak berkaitan dengan dan tidak diniatkan untuk mengawalselia keberkesanan sesuatu perintah letakhak. Ia juga tidak menghalang operasi suatu perintah yang dibuat oleh Mahkamah Tinggi ke "bidangkuasa tempatan" Mahkamah Tinggi yang lain. Dengan kata lain, s. 23(1) CJA tidak menghalang pelaksanaan di Sabah dan Sarawak suatu perintah letakhak yang dibuat oleh Mahkamah Tinggi Malaya di Kuala Lumpur. Keberkesanan atau kesan perintah-perintah kedua-dua Mahkamah Tinggi Malaya dan Mahkamah Tinggi Sabah dan Sarawak telah diperuntukkan oleh s. 50(1), (3), (4), (6) dan (7) BAFIA, s. 7(2) CJA dan fasal 121(3) Perlembagaan Persekutuan ('Perlembagaan'). Walaupun s. 50 subs. (1), (3), (4), (6) dan (7) BAFIA dipertimbang di dalam kes *Lee Hui Jian*, s. 7(2) CJA serta fasal 121(3) Perlembagaan telah tidak ditangani. Undang-undang bertulis terkemudian tersebut memerlukan pertimbangan yang lebih terperinci.

(2) Niat undang-undang yang terserlah dari s. 50 subs. (1), (3), (4), (6) dan (7) BAFIA adalah untuk mengawalselia pemakaian sesuatu perintah letakhak dan untuk memudahkan pemindahan berkesan kesemua atau sebahagian perniagaan, aset-aset, hak-hak dan liabiliti-liabiliti dari bank pendulu kepada bank pengganti dan bukannya untuk mencipta halangan-halangan terhadap keadilan substantial.

(3) Subseksyen (2) s. 7 CJA menyatakan bahawa semua writ, saman, waran, perintah, kaedah, notis dan apa jua proses-proses lain, sama ada sivil atau jenayah, yang dikeluarkan atau dibuat di bawah kuatkuasa mahkamah berhubung dengan mana-mana kausa atau perkara di dalam bidangkuasanya hendaklah mempunyai kuatkuasa and kesan sepenuhnya dan boleh diserah atau disempurnakan di mana jua di dalam Malaysia. Status s. 7(2) CJA selanjutnya diangkat dan dimantapkan oleh fasal 121(3) Perlembagaan. Fasal 121(3) Perlembagaan jelas menyatakan bahawa mana-mana perintah atau penghakiman hendaklah mempunyai kuatkuasa dan kesan sepenuhnya ke atas seluruh wilayah persekutuan, iaitu Malaya, Sabah dan Sarawak. Ia juga membolehkan undang-undang persekutuan membuat peruntukan bagi membolehkan sesebuah Mahkamah Tinggi bertindak untuk membantu Mahkamah Tinggi yang lain.

(4) Fasal 74(1) Perlembagaan memperuntukkan bahawa Parlimen boleh membuat undang-undang berkaitan mana-mana perkara yang disenaraikan di dalam senarai Pertama atau ketiga Jadual Kesembilan, iaitu Senarai Persekutuan atau Senarai Bersama. Item 7(j) Senarai Pertama (Senarai Persekutuan) memperuntukkan bahawa perkara-perkara mengenai kewangan termasuk perkara perbankan jatuh di bawah kuasa kerajaan persekutuan. Oleh itu, BAFIA, sebagai undang-undang persekutuan, adalah terpakai ke seluruh Malaysia.

(5) Perintah letakhak berkesan untuk memindahkan perniagaan responden yang terletak di mana-mana bahagian Malaysia kepada CIMB Bank dan berkesan bagi seluruh Malaysia. Dengan itu, soalan yang dibangkitkan harus dijawab secara afirmatif.

(6) Seperti yang diputuskan oleh Mahkamah Rayuan, keputusan dalam *Lee Hui Jian v Public Bank Bhd* adalah ditolak.

Case(s) referred to:

Dato' Menteri Othman Baginda & Anor v. Dato' Ombi Syed Alwi Syed Idrus [1981] 1 MLJ 29 ***(refd)***

Faridah Begum Abdullah v. Sultan Hj Ahmad Shah [1996] 2 CLJ 159 ***(refd)***

Lee Hui Jian v. Public Bank Bhd [2007] 2 CLJ 551 HC ***(ovrd)***

Leong Moh Sawmill Co Sdn Bhd (In Liquidation) v. Standard Chartered Bank & Ors [1997] 2 CLJ 131 CA ***(refd)***

Phileo Allied Bank (M) Bhd v. Koshish Credit & Leasing Sdn Bhd [2001] 4 CLJ 788 HC ***(refd)***
PP v. Mohd Noor Jaafar [2006] 1 CLJ 103 HC ***(refd)***
Socooil Corporation Bhd v. Ng Foo Chong & Anor [1981] 2 MLJ 7 ***(refd)***
Socooil Corperation Bhd v. Ng Foo Chong [1984] 2 MLJ 85 ***(refd)***
Standard Chartered Bank Malaysia Bhd v. Eden Enterprises (M) Bhd [2003] 2 CLJ 671 HC ***(refd)***
Sukma Darmawan Sasmitaat Madja v. Ketua Pengarah Penjara Malaysia & Anor [1999] 1 CLJ 481 CA ***(refd)***
Tong Aik (Far East) Ltd v. Eastern Minerals and Trading (1959) Ltd [1965] 2 MLJ 149 ***(refd)***

Legislation referred to:
Banking and Financial Institutions Act 1989, ss. 50(1), (3), (4), (6), (7)
Courts of Judicature Act 1964, ss. 7(2), 23(1)
Federal Constitution, arts. 74(1), 121(3)
Rules of the High Court 1980, O. 14, O. 15 r. 7(2)

For the appellants - M/s George Lo & Partners
For the respondent - M/s Reddi & Co

[Appeal from Court of Appeal; Civil Appeal No: Q-02-589-2007]

Reported by Usha Thiagarajah

JUDGMENT

Alauddin Mohd Sheriff PCA:

[1] On 15 June 2007, the learned judge of the High Court in Sabah and Sarawak at Kuching dismissed the summons in chambers of the appellants who sought to strike out the respondent's writ and statement of claim. Meanwhile, the High Court allowed the respondent's summons in chambers for substitution.

[2] The appellants then appealed to the Court of Appeal and on 28 January 2008, the Court of Appeal dismissed the appellants' appeal with costs.

[3] Dissatisfied with the above decision the appellants sought leave to appeal to the Federal Court.

[4] On 24 March 2008, the appellants were granted leave to appeal by the Federal Court.

[5] The question of law for which leave was granted is:

> Whether a vesting order made by the High Court in Malaya pursuant to section 50 of the Banking and Financial Institutions Act 1989 (BAFIA) is effectual in transferring to and vesting in the transferee, all the transferor's rights, assets and liabilities including all legal proceedings involving the transferor in Sabah and Sarawak.

Background Facts

[6] The first appellant is a borrower under a banking facilities granted by the respondent and guaranteed by three guarantors, two of whom are the second and third appellants.

[7] The respondent filed a suit in the High Court in Sabah and Sarawak at Kuching ("the Kuching Suit") against the appellants to recover the amounts owing under the banking facilities.

[8] By an agreement entered into between the respondent and CIMB Bank Bhd ("CIMB Bank"), the respondent assigned to CIMB Bank all it's rights, assets and liabilities including all legal proceedings with effect from 1 November 2006. Following such assignment, the respondent and CIMB Bank made a joint application to the High Court in Malaya at Kuala Lumpur, pursuant to BAFIA and obtained a vesting order on 6 September 2006 ("the vesting order").

[9] Based on the vesting order, the respondent and CIMB Bank made an application in the Kuching suit for substitution of the respondent by CIMB Bank as the plaintiff ("the substitution application").

[10] The appellants then filed an application to strike out the Kuching suit ("the striking-out application") on the grounds that:

(a) the vesting order is incompetent to effect the transfer of the respondent's claim to CIMB Bank; and

(b) CIMB Bank does not have the requisite *locus standi* in the Kuching suit.

[11] Both the aforesaid applications revolve around the legal effect of the vesting order.

[12] The High Court:

(i) granted the order for substitution; and

(ii) dismissed the striking-out application.

[13] The appellants appealed to the Court of Appeal. The Court of Appeal dismissed the appellants' appeal and affirmed the decision of the High Court.

[14] Hence, the appellants' appeal to this court on the question of law as stated in para 5 above.

Issue

[15] The issue for determination by this court is as stated in the question of law posed ie, "Whether a vesting order made by the High Court in Malaya pursuant to s. 50 of BAFIA 1989 is effectual in transferring to and vesting in the transferee, all the transferor's rights, assets and liabilities including all legal proceedings involving the transferor in Sabah and Sarawak."

Discussion And Resolution Of The Issue

Decisions At High Court And Court Of Appeal

[16] As pointed out by the Court of Appeal at paras 14-19 of their judgment, there are two divergent views at the High Court level.

[17] In *Lee Hui Jian (f) v. Public Bank Bhd* [2007] 2 CLJ 551, a similar vesting order made under s. 50 was considered by Linton Albert J of the High Court in Sabah and Sarawak at Sibu.

[18] In that case, his Lordship held that:

(1) the vesting order given by the High Court in Malaya at Kuala Lumpur must of necessity be ineffectual in transferring to the plaintiff the Finance Company's business assets and liabilities in Sibu, Sarawak; and

(2) the vesting order could only have been effectual if it had been made by the High Court in Sabah and Sarawak.

[19] We note that in *Lee Hui Jian, supra*, the learned judge had recognized the jurisdiction of the High Court in Malaya at Kuala Lumpur to make the vesting order, but was unable to sustain the extent and applicability of the vesting order beyond the territorial jurisdiction of the High Court in Malaya.

[20] The appellants in the present appeal grounded their striking-out application at the High Court upon the case of *Lee Hui Jian* (see grounds of application at p. 86 record of appeal).

[21] A diametrically opposite view was given in the judgment which is now the subject matter of the instant appeal. Clement Skinner J of the High Court in Sabah and Sarawak at Kuching held that the vesting order is effectual to transfer and vest in CIMB Bank all respondent's rights, assets and liabilities in any part of Malaysia including all legal proceedings involving the respondent to CIMB Bank throughout the whole of Malaysia.

[22] His Lordship's decision is based on the interpretation of s. 50 of BAFIA and the application of art. 121(3) of the Federal Constitution and s. 7(2) of the Courts of Judicature Act 1964 ("CJA"). Article 121(3) of the Federal Constitution, s. 7(2) of the CJA and the analysis of s. 50 of BAFIA were never considered in *Lee Hui Jian, supra*.

[23] In *Lee Hui Jian, supra*, the learned judge made reference to s. 50 BAFIA and s. 23(1) CJA. The correctness or otherwise of the decision in *Lee Hui Jian, supra*, depends on whether s. 50 and s. 23(1) have been correctly applied by the learned judge. The Court of Appeal decided they were not.

[24] The Court of Appeal resolved these divergent views by holding that the decision in *Lee Hui Jian, supra*, has fallen into error and is overruled. We agree.

Our Findings

[25] We note that s. 23(1) CJA deals with the "jurisdiction to try", which in turn is founded on certain jurisdictional facts as enumerated in para (a) to (d) therein. To our minds s. 23(1) does not deal with nor is it intended to regulate the efficacy of a vesting

order. Further, it does not in any way exclude the operation of an order, made by one High Court, in the "local jurisdiction" of another High Court. In other words, s. 23(1) does not exclude the operation, in Sabah and Sarawak, of the vesting order made by the High Court in Malaya at Kuala Lumpur. The efficacy or effect of the orders of the two High Courts, *viz* the High Courts in Malaya and the High Courts in Sabah and Sarawak are provided in s. 50(1), (3), (4), (6) and (7) BAFIA; s. 7(2) CJA and art. 121(3) of the Federal Constitution.

[26] Although s. 50(1), (3), (4), (6) and (7) BAFIA had been considered in *Lee Hui Jian supra,* s. 7(2) and art. 121(3) had not been. We feel that these written laws require a more elaborate consideration.

[27] In our judgment, the intention of the law expressed in s. 50(1), (3), (4), (6) and (7) as a whole is to regulate the application for a vesting order and to facilitate the effectual transfer of the whole or part of the business, assets, rights and liabilities from the predecessor bank to the successor bank, and not to create obstacles to stand in the way of substantial justice.

[28] We note that s. 50(1) BAFIA envisages only one application to be made as the language used is "a joint application to the High Court" and "in such application".

[29] Section 50(3) provides for the mechanism of vesting of the assets and business of one entity in the other by the making of one order of the High Court. The vesting order shall have effect according to its terms "notwithstanding anything in any law or rule of law".

[30] The expression "notwithstanding anything in any law or in any rule of law" ("the expression") in s. 50(3) has received extensive recognition and explanation in several cases (see *Leong Moh Sawmill Co. Sdn Bhd (In Liquidation) v. Standard Chartered Bank & Ors* [1997] 2 CLJ 131; *PhileoAllied Bank (M) Bhd v. Koshish Credit & Leasing Sdn Bhd* [2001] 4 CLJ 788 and *Standard Chartered Bank Malaysia Bhd. v. Eden Enterprises (M) Bhd* [2003] 2 CLJ 671).

[31] In *Leong Moh Sawmill Co. Sdn. Bhd. (In Liquidation), supra,* the issue is whether a foreign bank, the Standard Chartered Bank ("the predecessor bank") can continue to pursue matters relating to foreclosure proceedings in its name after it had already sold all its banking business in Malaysia to Standard Chartered Bank Malaysia Bhd ("the successor bank") pursuant to a vesting order made under s. 50(1). In view of the expression in s. 50(3), Siti Norma Yaakob, JCA (later CJ(M)) held, *inter alia*, as follows:

(a) the vesting order was such that there was no requirement for a formal order of substitution under O. 15 r. 7(2) of the Rules of the High Court 1980;

(b) the successor bank was deemed to be a party in all proceedings initiated by or commenced against the predecessor bank; and

(c) the transfer of any property or business pursuant to the vesting order shall not and from the transfer date become vested in or held by the transferee ie, a transmission of interest from one legal entity to another.

[32] In *Standard Chartered Bank Malaysia Bhd, supra,* the Standard Chartered Bank, (the predecessor bank) agreed to give the defendant banking facilities. The plaintiff is the successor bank under s. 50. On the defendant's default, the successor bank sued for and obtained, from the registrar, summary judgment under O. 14 of the Rules of the High Court 1980 for the outstanding debt. On appeal to the judge in chambers, Selventhiranathan J also followed *Leong Moh Sawmill Co. Sdn. Bhd. (In Liquidation), supra,* and held, *inter alia* (at p. 677), that:

> The relevant provisions of the Act in this context are enabling in nature and not prohibitory in that they made possible the transfer of SCB's business in Malaysia as a whole to the plaintiff through a single application to the High Court, thereby obviating the need for a piecemeal transfer of the assets and liabilities related to the said business.

[33] Next, s. 50(4) provides for the vesting order to be published in not less than two daily newspapers in Malaysia. This is clearly intended to give nationwide publicity to the vesting order and to give nationwide effect to it. If the intention had been otherwise than there would have been no reason to stipulate or ensure publication in Malaysia as a mandatory requirement thereunder.

[34] Further, s.50(6) contains mandatory provisions which are applicable in all the territories of Malaysia *viz* Malaya, Sabah and Sarawak, by way of "an order of the High Court" ie, one and the same order.

[35] Finally, s.50(7) not only empowers the vesting order to cover property or business outside Malaysia, but also specifies how, after a vesting order has been made, effect may be given to that order or how it could be enforced either by way of reciprocal enforcement of judgments between Malaysia and the foreign country, territory or place outside Malaysia; or in accordance with the law of the foreign country, territory or place. So much for BAFIA.

[36] We shall now examine the relevance of s. 7(2) CJA and art. 121(3) of the Federal Constitution in the context of this appeal.

[37] Subsection (2) of s. 7 CJA provides that:

> All writs, summonses, warrants, orders, rules, notices and other processes whatsoever, whether civil or criminal, issued or made by the authority of the Court respecting any cause or matter within its jurisdiction **shall have full force and effect and may be served or executed anywhere within Malaysia.**

[38] The status of s. 7(2) CJA is further elevated and enhanced by the provision of art. 121(3) of the Federal Constitution which provides:

> (3) Subject to any limitations imposed by or under federal law, any order, decree, judgment or process of the courts referred to in Clause (1) or of any judge thereof shall (so far as its nature permits) **have full force and effect according to its tenor throughout the Federation,** and may be **executed or enforced in any part of the Federation,** accordingly; and federal law may provide for **courts in one part of the Federation or their officers to act in aid of courts in another part.**

[39] The intention and implication of art. 121(3) may be determined by reference to the relevant principles of constitutional interpretation (See *Dato' Menteri Othman bin Baginda & Anor v. Dato' Ombi Syed Alwi bin Syed Idrus* [1981] 1 MLJ 29, *Faridah Begum bte Abdullah v. Sultan Haji Ahmad Shah* [1996] 2 CLJ 159; *PP v. Mohd Noor bin Jaafar* [2006] 1 CLJ 103 and *Sukma Darmawan Sasmitaat Madja v. Ketua Pengarah Penjara Malaysia & Anor* [1999] 1 CLJ 481).

[40] Having read the above cases and applying the principles or constitutional interpretation referred to therein we are of the view that art. 121(3) clearly provides for any order or judgment to have full force and effect according to its terms throughout all the territories constituting the federation ie, Malaya, Sabah and Sarawak. It also enables federal law to provide for one High Court to act in aid of the other.

[41] For the effect of art. 121(3) of the Federal Constitution, see the Federal Court case of *Tong Aik (Far East) Ltd. v. Eastern Minerals and Trading (1959) Ltd.* [1965] 2 MLJ 149. See also the *obiter dicta* of the Privy Council in *Socooil Corperation Bhd. v. Ng Foo Chong* [1984] 2 MLJ 85 at p. 86 whereby the provision of art. 121(3) were acknowledged. See also the decision of the Federal Court in *Socooil Corporation Bhd. v. Ng Foo Chong & Anor* [1981] 2 MLJ 7 at p. 9.

[42] For completeness we feel it is also appropriate to refer to art. 74(1) of the Federal Constitution which provides that Parliament may make laws with respect to any matters enumerated in the First or Third List of the Ninth Schedule thereto (ie, the Federal List or Concurrent List). Item 7(j) of the First List (Federal List) provides that matters of Finance including Banking matters fall under the purview of the Federal Government. Thus BAFIA, a federal legislation, applies throughout Malaysia.

Conclusion

[43] On the foregoing grounds, we hold that the vesting order is effectual in transferring the business of Southern Bank located in any part of Malaysia to CIMB Bank and is effective throughout the whole of Malaysia.

[44] The answer to the above question for determination by this court must therefore be in the affirmative.

[45] Hence, with utmost respect, we agree with the decision of the Court of Appeal that the decision in *Lee Hui Jian, supra,* has fallen into error and is overruled.

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Order

[46] In the circumstances, the appellants' appeal is hereby dismissed with costs. The decision of the Court of Appeal dismissing the appellates' appeal is affirmed. Deposit to the respondent on
B account of taxed costs.

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